IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4-4-2006

Coram:

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P. (PD) No.1824 of 2004
and
C.M.P.No.17236 of 2004

1. G. Venkatraman
2. Sumathi Venkatraman .. Petitioners

vs.

M/s.India Cement Capital &
Finance Ltd,
38, Sterling Road,
Chennai-34. .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the preliminary order dated 30.8.2004 of the Arbitral Tribunal, Chennai in Arbitral proceedings A.R. 27 of 2003.

For Petitioners : Mr.D.Shivakumaran

For Respondents : Mr.C.Prasanna Venkatesh

O R D E R

This revision petition is preferred by the respondents in the arbitral proceedings in AR 27 of 2003 pending before the Arbitral Tribunal and they have filed this revision under Article 227 of the Constitution of India questioning the preliminary order dated 30.8.2004 passed by the said Arbitral Tribunal in the said proceedings.

2. Heard Mr.D.Shivakumaran, learned counsel for the revision petitioners and Mr.C.Prasanna Venkatesh, learned counsel for the respondent.

3. The impugned order was passed by the sole Arbitrator on 30.8.2004 pending arbitration proceedings in the matter of hire

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purchase agreement dated 28.9.2001 between M/s.India Cement Capital and Finance Ltd, Chennai, the respondent herein and M/s.G.Venkatraman and Sumathi Venkatraman, Coimbatore, the revision petitioners herein.

4. A careful reading of the impugned order discloses that the arbitral challenge made by the petitioners herein under Sections 12 and 13 of the Arbitration and Conciliation Act, 1996 was dismissed by passing the following penultimate order:-

> "Justice delayed is justice denied. Therefore the Arbitral proceedings should go on undisturbed so that the avowed objective of speedy dispute resolution is achieved. The Claimant and the Learned Counsel have placed extensive materials, the powers to decide on the Challenge to one's own appointment and the absence of an appellate mechanism over such decision have placed greater responsibility of ensuring fairness and impartiality on the part of the Arbitrator. I shall strive to fulfil the responsibility imposed by law and as laid down in the various judicial pronouncements placed before me."

5. It is seen from the impugned order that the petitioners herein pleaded that the Sole Arbitrator should withdraw from the arbitral nomination. Hence, it is needless to state that the sole abitrator has yet to pass the arbitral award under the provisions of the Arbitration and Conciliation Act, 1996. In this context, learned counsel for the respondent has relied on the judgment of the Honourable Supreme Court reported in 2005 (3) Arb.LR 285 (S.C.) (S.B.P. & CO v. PATEL ENGINEERING LTD) in support of the proposition of law that under Article 227 of the Constitution of India, the order passed by the Arbitral Tribunal during arbitration cannot be challenged and that the parties have to approach the court only in terms of Section 34 or 37 of the Arbitration and Conciliation Act. The mandate of law has been enunciated in the said decision as under:-

> "It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act has to wait until the award is passed by the

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tribunal. This appears to be the Scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible."

6. In view of the principle of law reiterated by the Apex Court in the decision referred supra, this Court is of the considered view that the revision petition is not maintainable and is liable to be dismissed.

7. Thus the Civil Revision Petition is dismissed. Consequently, C.M.P.No.17236 of 2004 is closed. However there is no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dpp

To

The Arbitral Tribunal,
(Thiru N.Umasankar,Sole Arbitrator),
71, Burkit Road,Chennai-17.

C.R.P.(PD)No.1824 of 2004;&
C.M.P.No.17236 of 2004

MJ (CO)
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